IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of Case.

WP No. 827 (S/S) of 2001

Date of decision :- 19-9-2006

~~**A.F.R. (Approved for reporting)**~~

Not approved for reporting

Date :- 19-9-2006 Initial of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARNACHAL, AT NAINITAL

Civil Misc. Writ Petition No. 827 (S/S) of 2001

Pramod Kumar Tyagi and 6 others …Petitioners

Versus

1. State of Uttaranchal through Secretary, Nagar Vikas, Government of Uttaranchal

2. The Executive Officer, Nagar Panchayat Laxar, Distt. Haridwar ….Respondents

Mr. Alok Mehra, learned counsel for the petitioners.
Mr. N.C. Gupta, learned counsel for the respondent No. 2.
Mr. N.P. Sah, learned Standing Counsel for the State

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioners have sought the following relieves:-

> "i) To issue a writ or direction in the nature of Mandamus directing the respondents to regularize the services of the petitioners and pay the salary and allowances admissible to them.
>
> ii) To issue any other order or direction or writ in the circumstances of the case as this Hon'ble Court may deem fit and proper.
>
> iii) To award the cost of the writ petition to the petitioners."

2. The petitioner Nos. 1 to 5 were appointed as Safai Karamchari on daily wages on or before 1990, the petitioner No. 6 was appointed as Electrician in the year 1993 and the petitioner No. 7 was appointed as plumber in the year 1996 by the respondent No. 2 in Nagar Panchayat Laksar, District-Haridwar. All the petitioners have been working since their appointments with the respondents. The petitioners had been working regularly but they were not regularized by the respondents and the respondents are not paying regular

salary as their counterparts are receiving. The petitioners are being paid the minimum wages of Rs. 60/- per day while the other regular employees are getting a salary of Rs. 2550/- p.m. The petitioners are entitled to get the equal pay for the equal work. The services of the petitioners were not regularized and they were not allowed the regular pay which is admissible to the regular employees. The petitioners had been continuously working for more than 10 years without any break, as such, they are entitled to be regularized in the post on which they are working. It was further pleaded that they are performing the similar duties as the other regular employees are performing so they are entitled to get the similar pay admissible to the regular employees performing the similar duties. The respondents are not paying the same salary to the petitioners admissible to the regular employees. Hence this writ petition has been filed before this court.

3. The respondents had filed counter affidavit in which the respondents had pleaded that the petitioners were never appointed under any substantive post or against any vacant post with the answering respondents but they were only engaged on daily wages basis subject to the availability of the work. It was further pleaded that the petitioners are not entitled to get the equal pay for the equal work. They were engaged on daily wages and not on the regular appointment. At last the respondents had prayed that the petitioner may be dismissed.

4. Heard Sri Alok Mehra, learned counsel for the petitioners, Sri N.C. Gupta, learned counsel for the respondent No.2, Sri N.P. Sah, learned Standing Counsel for the respondent No. 1/State and perused the record.

5. Learned counsel for the petitioners contended that the petitioners had been working regularly but they were not regularized by the respondents. It was also contended by the learned counsel for the petitioners that the petitioners were not regularized and they were not allowed the regular pay which is admissible to the regular employees. It was also contended that the petitioners had been continuously working for more than 10 years without any break, as such, they are entitled to be regularized in the post on which they are working. It was further contended that the petitioners are performing the similar duties as the other regular employees are performing so they are entitled to get the similar pay admissible to the regular employees. The learned counsel for the respondents refuted the contention and contended that petitioners were never appointed under any substantive post or against any vacant post with the respondents and the petitioners were engaged on daily wages basis subject to the availability of the work. Learned counsel for the respondents refuted the contention and contended that the petitioner is not entitled for any relief and he was not appointed against the regular and substantive vacancy in view of the recent Constitution Bench decision of the **Hon'ble Supreme Court in Secretary, State of Karnataka Vs. Umadevi 2006 AIR SCW p/1991.** It is well settled position of law that if a person is appointed on a daily wage/contractual basis, the appointment comes to an end at the end of the contract, if it was an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a daily wager cannot claim to be made permanent on the expiry of his term of appointment. It is also settled that merely because a temporary employee or a daily wage worker is continued for a time beyond the term

of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who be the very nature of their appointment, do not acquire any right. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It has been held by the Hon'ble Supreme Court in Umadevi (supra) that:-

> *"34. ……..Thus, it is clear, that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinues. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his*

appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mound the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

35. …….

36. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain-not at arm's length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of

appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

6. The learned counsel for the petitioners further contended that the petitioners are entitled for equal pay for equal work. It was contended that the petitioners have their vested rights to get the equal pay for equal work. The respondents are treating the petitioners unfairly by giving

him less wages in comparison with those directly recruited who are getting more wages or salaries for doing the similar work. Learned counsel for the respondents refuted the contention. The petitioners were employed on daily wage basis in the department. It is not the case of the petitioners that the wages agreed upon was not being paid by the respondents. The petitioners are the daily wagers and they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. The petitioners have no rights to claim the equal pay for equal work. It has been noticed that the government had time to time revised the wages of the daily wagers keeping in mind the inflation prevalent in the society. When any person is appointed as daily wager or ad-hoc employee, he knows the nature of his appointment and the wages he would get after his engagement. He accepts the employment knowing the consequence of the employment. He also knows that he had been appointed by the appointing authority without any process being undertaken for selection authority without any process being undertaken for selection and he had deprived a number of persons who were aspirant of the employment. He very well knows that he had got the employment with the sympathy of the appointing authority. Thus, he would be ready to face the consequences of the employment which he had received in relaxation of the authorities and behind the back of constitutional scheme. Thus, such employees whose induction in the service is itself against the constitutionally scheme, create a class itself and they cannot claim parity with the duly appointed employees under the constitutional scheme. It has been held in Umadevi (supra) that :-

> *"39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them*

on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

40. …….

41. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under

Article 21 of the Constitution, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality."

7. In view of the above, I am of the view that the contentions of the learned counsel for the petitioners have no force. The petitioners are not entitled to be regularized and they are also not entitled to get equal pay for equal work. Therefore, the petition is devoid of merit and is liable to be dismissed.

8. The writ petition is dismissed accordingly. No order as to costs.

9. All applications pending in this case are stand disposed of in terms of the judgment.

(J.C.S. Rawat, J.)

19th September, 2006
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